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No. 87-6127

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IN THE

Supreme Court of the United States

October Term, 1987

RONALD RAY POST,
Petitioner,
vs.
STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

OPPOSING BRIEF TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

On December 14, 1983, the Petitioner Ronald Post and two other individuals named Ralph Hall and Jeff Hoffner took possession of a .22 caliber handgun, and proceeded to drive through the City of North Ridgeville, Ohio for the purpose of finding a business establishment to rob.

After being foiled in an attempt to rob a local grocery store, the three discussed robbing a local motel known as the Slumber Inn. The three then decided to go to the Slumber Inn for the purpose of robbing the same.

Upon arrival, the Petitioner parked his motor vehicle and entered the Slumber Inn while Mr. Hall and Mr. Hoffner remained in his vehicle. While inside the Slumber Inn, the Petitioner met with the afternoon shift desk clerk whom he knew from prior years. At this time he informed the clerk that he was there for the purpose of checking out room rates, and that he might need a place to stay. The Petitioner subsequently left the Slumber Inn, and he and his two accomplices decided that they would not complete the robbery.

The Petitioner then proceeded to drop off Mr. Hall and Mr. Hoffner at their respective residences, but the Petitioner kept possession of the .22 caliber handgun. Subsequent thereto Petitioner drove his motor vehicle back to the Slumber Inn Motel and engaged the afternoon shift desk clerk in another conversation. At approximately 12:15 a.m. on December 15, 1983, Mrs. Helen Vantz, the victim, arrived for her shift as the midnight desk clerk at the Slumber Inn. At this time the Petitioner was introduced to Mrs. Vantz by the afternoon shift desk clerk as someone she had known in the past. The Petitioner and the two clerks engaged in a conversation during which Mrs. Helen Vantz was told by the afternoon shift desk clerk that Mr. Post might later return for a room. Subsequent thereto, Mr. Post and the afternoon desk clerk proceeded to another local hotel. Approximately two and one-half hours later the Petitioner returned by himself to the Slumber Inn, armed with the handgun previously mentioned. His plan was to kill Mrs. Vantz and to remove what valuables he could

find from the Inn. The victim, Helen Vantz, having previously been advised that the Petitioner might return for the purposes of obtaining lodging, allowed him to enter the lobby area. The Petitioner remained there, engaging Mrs. Vantz in conversation past the hour of 4 a.m., when a wake-up call was made by the victim to the occupants of one of the motel rooms.

The next wake-up call scheduled to be made at 6 a.m. was never made.

Sometime between the hours of 4 a.m. and 6 a.m. on December 15, 1983, the Petitioner carried out his plan to rob the Slumber Inn and murder Helen Vantz. As Mrs. Vantz was sitting at her desk preparing her nightly accounts, the Petitioner positioned himself just behind her right shoulder. From a distance of approximately six feet, the Petitioner murdered Mrs. Vantz by firing his handgun twice into her head. As a result of the two projectiles which entered the rear portion of Mrs. Vantz's skull, Mrs. Vantz died.

After killing Mrs. Vantz, the Petitioner removed certain items of value from the premises, including a bank deposit bag containing approximately $100.00, and a handbag containing various items belonging to the victim.

At approximately 7 a.m., the victim's body was discovered by an occupant of the motel who was in the process of checking out. The body was slumped in the desk chair, where she was working when she was killed, and her pencil was still clasped in her hand.

Meanwhile, the Petitioner had returned to the City of North Ridgeville and advised Ralph and Debbie Hall of what he had done. The Petitioner then asked Mr. Hall to dispose of the murder weapon.

He then proceeded to the house of Mr. James Harsh, for the purpose of establishing an alibi. He obtained a commitment from Mr. Harsh to state that he arrived at the Harsh residence at approximately 2:30 a.m. and stayed there until 7:30 a.m., December 15, 1983. He also confessed to Mr. Harsh that he had killed Helen Vantz and robbed the Slumber Inn.

The Petitioner subsequently made several other incriminating statements outlining his sole involvement in these crimes to approximately four other individuals.

The Petitioner also admitted to Detectives Medders and Jaykel of the Elyria City Police Department that he had previously admitted to a Mr. David Thacker that he was the perpetrator of these crimes.

The Petitioner was subsequently indicted on one count of aggravated robbery with a firearm specification; one count of aggravated murder with the specification that he was the principal offender during the commission of an aggravated robbery when he committed a murder with a firearm; and in the alternative he was indicted for aggravated murder with the specification alleging that the murder occurred during the course of an aggravated robbery, and that the Petitioner possessed a firearm during the course of the offense.

On or about November 30, 1984, the Petitioner withdrew his formal pleas of not guilty to all counts in the indictment and entered a plea of no contest to the indictment. At this time the Petitioner's counsel indicated that with one exception, it was agreed as part of the plea bargain that Petitioner's counsel would not contest or deny the statement of facts the prosecutor was about to read into the record. The prosecutor then read into the record a set of facts almost identical to those previously described herein.

Upon consideration of the Petitioner's plea of no contest, the trial court found the Petitioner guilty on all counts and each and every specification as set out in the indictment.

On or about March 12, 1985, a three-judge panel was convened in order to hear evidence of aggravating and/or mitigating circumstances to determine the type of sentence or punishment which would be rendered on this matter. At this time the State of Ohio resubmitted an uncontested statement of facts which substantiated the Petitioner's prior calculation and decision to end the life of Mrs. Helen Vantz. This statement of facts also substantiated the fact that the Petitioner intended to cause the death of Helen Vantz during the course of an aggravated robbery.

During the course of the hearing on March 12, 1985, the Petitioner proffered evidence which he believed supported mitigating circumstances for the sentencing panels' consideration. After the Petitioner had rested, at the request of one of Petitioner's attorneys, the sentencing panel asked whether any member of the victim's family was present, and whether any such member would wish to bring to the court's attention matters that might be pertinent on aggravation or mitigation. At this time, and without any objection from either of the petitioner's two attorneys, the son of the victim addressed the three-judge panel. See pages A23 through A25 in the Appendix to this Brief.

Subsequent to the aforementioned hearing, the sentencing panel found that the Petitioner was not a youthful offender, and that he lacked a significant history of prior criminal convictions, although he did have prior misdemeanor convictions reflecting a tendency to violence. The sentencing panel further found that the

Petitioner's plea of no contest failed as an admission of the offense and that this was not considered as a factor in mitigation. The panel further found that the Petitioner was the principal offender in the course of an aggravated robbery, and that the offense of aggravated murder was committed during this aggravated robbery while the Petitioner was possessed of a firearm. The sentencing panel unanimously found that the State of Ohio had proven the aggravating circumstances beyond a reasonable doubt, and that the Petitioner had failed to prove any mitigating factors by a preponderance of the evidence.

The Petitioner was then sentenced to death on the aggravated murder during the course of the commission of the aggravated robbery. The Petitioner was sentenced to ten to twenty-five years on the aggravated robbery and three additional years for the use of the firearm. All sentences were to be served consecutively.

The Ninth District Court of Appeals unanimously found that no error was committed in the trial court, and that no mitigating factors existed, that one aggravating circumstance existed and that the penalty was not excessive and disproportionate to that imposed in similar situations.

The Ohio Supreme Court unanimously found no error in the trial court, that no mitigating factors existed, that one aggravating circumstance existed and that the penalty was not excessive or disproportionate to that imposed in similar situations.

REASONS FOR DENYING WRIT OF CERTIORARI

I. IN A BENCH TRIAL IN A CRIMINAL CASE, IT IS PRESUMED THAT THE TRIAL COURT CONSIDERED ONLY THE RELEVANT MATERIAL, AND COMPETENT EVIDENCE IN ARRIVING AT ITS JUDGMENT, UNLESS IT AFFIRMATIVELY APPEARS TO THE CONTRARY.

In his first proposition of law, the Petitioner contends that by virtue of this Honorable Supreme Court's holding in *Booth v. Maryland*, 482 U.S. _____, 96 L. Ed. 2d 440 (1987), *re-hearing denied*, 108 S. Ct. 31 (1987), it is error to allow the introduction of a victim impact statement during the sentencing phase of a capital case before a three-judge panel.

It should be initially pointed out that contrary to Maryland law, as the facts existed in *Booth*, *supra*, Ohio law does not allow for the introduction of victim impact evidence in pre-sentence investigation reports pertaining to capital offenses. See page 383 of the Ohio Supreme Court's opinion in *State v. Post* (1987), 32 Ohio State 3d 380, which is attached to the Petitioner's brief in the appendix in pages A4 through A11.

In the matter at hand, the victim's son was allowed to make an in-court statement during the sentencing phase of the proceedings. It must be pointed out however, that this statement was received without objection from the Petitioner. See pages A23 through A25 in the Appendix to this Brief.

Additionally, it should be pointed out that no assignment of error was raised in the Court of Appeals on the admission into evidence of the victim impact statement. Generally, such evidence is excluded because

it is irrelevant and immaterial to the guilt or innocence of the accused and the penalty to be imposed. The principle reason for the prejudicial effect is that it serves to inflame the passion of a jury with evidence collateral to the principle issue at bar. Although the admission and subsequent argument with the use of this testimony may constitute prejudicial error before a jury, it is submitted that such evidence does not prejudice a defendant before a three-judge panel, unless the three-judge panel specifically points to such evidence in rendering a sentence of death.

It is respectfully submitted that the Petitioner can point to no part of the three-judge sentencing panel's written decision reflecting a reliance on the part of the panel on such evidence to justify the sentence of death.

Due to the fact that the Petitioner did not object to any of the victim impact evidence during the sentencing phase before the three-judge panel, due to the fact that the Petitioner did not assign as error in the first appellate stage the admission of such evidence, and due to the fact that the Petitioner can point to no reliance upon such evidence by the three-judge panel in rendering its sentence of death, it is respectfully submitted that the Petitioner has waived any objections to the admissibility of such evidence, and he has failed to show that any of this evidence was prejudicial. As such, it is respectfully submitted that the victim impact statement in this matter did not violate the Petitioner's rights pursuant to the Eighth and Fourteenth Amendments of the United States Constitution, or this Court's decision in *Booth v. Maryland, supra.*

II. A CLIENT'S DISCLOSURE TO A THIRD PARTY OF COMMUNICATIONS MADE PURSUANT TO THE ATTORNEY-CLIENT PRIVILEGE BREACHES THE CONFIDENTIALITY UNDERLYING THE PRIVILEGE, AND CONSTITUTES A WAIVER THEREOF. AS SUCH, REQUIRING A CRIMINAL DEFENDANT'S COUNSEL TO PRODUCE UNPRIVILEGED DOCUMENTARY EVIDENCE DOES NOT VIOLATE THE DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, OR THE DEFENDANT'S RIGHT AGAINST SELF-INCRIMINATION.

On November 20, 1984, the trial court conducted a hearing on the Petitioner's motion *in limine* to exclude the testimony of Detective Robert Holmok, a polygraphist. Detective Holmok had been retained by the attorneys for the Petitioner for the purpose of administering a polygraph test. Prior to administering the polygraph test, the Petitioner admitted to Detective Holmok that he had robbed the Slumber Inn on December 15, 1983 and shot and killed Helen Vantz. The Petitioner also signed a written document containing this statement. Subsequent to making this confession to his own polygraphist, the Petitioner admitted to a fellow inmate at the Lorain County Correctional Facility, Richard Slusher, that he had signed a written confession admitting his part in the murder of Helen Vantz while he was in the presence of Detective Holmok. The Petitioner also stated to Richard Slusher that the facts contained within the said written confession were true.

The State of Ohio learned of this confession from Richard Slusher and communicated to the attorneys for the Petitioner that the State would attempt to utilize

such evidence during the course of a trial. As a result of this communication, the attorneys for the Petitioners filed a motion *in limine* to exclude the testimony.

The trial court ruled that when the Petitioner disclosed to Richard Slusher the fact that he had made admissions to Robert Holmok, and signed a written confession to that effect, the Petitioner waived any and all claims of attorney-client privilege he might have had to the written confession or to the testimony from Mr. Holmok authenicating the written confession.

It should be pointed out to this Honorable Court that the State of Ohio did not utilize this piece of evidence in the facts presented to the trial court at the time that the Petitioner changed his plea from not guilty to no contest.

The Ohio Supreme Court held that a client disclosure to a third party of communications made pursuant to the attorney-client privilege breaches the confidentiality underlying the privilege and constitutes a waiver thereof.

In *Fischer v. United States* (1976), 425 U.S. 391, 96 S. Ct. 1569, this Honorable Court held that a taxpayer's fifth amendment privileges were not violated by the enforcement of a documentary summons directed towards their attorneys, for the production of documents which had been transferred to the attorneys in connection with an I.R.S. investigation. This Court held that due to a previous voluntary disclosure to I.R.S. by the Defendants, any privilege or confidentiality had been stripped, and thus defeated the attorney-client privilege. This Court held that in the absence of an attorney-client privilege, the taxpayer's attorney could not assert the taxpayer's fifth amendment privilege against self-incrimination to resist pre-trial subpoenas *duces tecum* issued on behalf of the government. In other words, this

Court held that an attorney cannot be forced to produce documents in his possession which are otherwise privileged under the attorney-client privilege. That in such a situation a production of such evidence would in fact be a violation of his client's fifth amendment rights against self-incrimination. However, where an attorney is in the possession of unprivileged evidence, he cannot assert his client's fifth amendment rights against self-incrimination so as to resist the production of such evidence.

Applied to the matter at hand, due to the fact that the written confession in issue was not privileged as a result of the Petitioner's waiver, there was no infringement upon his fifth amendment rights against self-incrimination by requiring his attorneys' experts to produce the written confession. Additionally, it must be pointed out again that this particular piece of evidence was not submitted by the state into evidence during the proceedings, and there is absolutely no requirement that the state would have utilized such evidence should it had been forced to try this matter.

The Petitioner also contends that his sixth amendment rights to assistance of counsel had been violated due to the Court's ruling that his written confession was admissible. This proposition of law must also fail for the same reasons that the Petitioner's self-incrimination rights were not violated by the admissibility of this evidence. Where confidential and privilege material is disclosed to the state or the federal government, it has been held that a criminal defendant's sixth amendment right to the effective assistance of counsel has been violated. However, where the criminal defendant has in fact waived any confidentiality or privilege to a particular piece of evidence and such

evidence thereby becomes admissible, a criminal defendant's sixth amendment right to the effective assistance of counsel is not violated by admitting such evidence. In conclusion, it is respectfully submitted that due to the fact that the Petitioner waived the confidential and privileged nature of his admission, by disclosing the substance and admitting its truth to a third party, the admissibility of such evidence is not a violation of the Petitioner's fifth amendment rights against self-incrimination, or his sixth amendment rights to the effective assistance of counsel.

III. PETITIONER'S PLEA OF NO CONTEST WAS VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY MADE AND THEREFORE VALID.

Petitioner attacks the validity of his no contest plea claiming it was not voluntarily, knowingly, and intelligently made. Petitioner argues that precedent established in *Brady v. United States*, 397 U.S. 742, 90 S. Ct. 1463 (1970) renders the plea invalid. This court's ruling in *Brady v. United States, supra*, determined that a plea must be made knowingly, voluntarily, and intelligently in order to be adjudged valid.

Petitioner's plea was knowingly, voluntarily, and intelligently made. The Petitioner was informed by the trial court of all the charges against him, he was informed of the punishment for each, and was informed of his rights to a jury trial, to confront witnesses, and to assistance of counsel. Subsequently Petitioner entered his plea of no contest. Petitioner was represented by counsel thorughout the procedure. *See* pages A1-A22 in the Appendix to this Brief.

It can only be assumed that the reason the Petitioner entered a plea of no contest was one of a strategic choice made by both the Petitioner and his counsel. This is much like the choice of presenting the case to a three judge panel rather than a jury. These were strategic choices made by the Petitioner in a knowing, voluntary, and intelligent manner.

There may be certain tactical or strategic instances when a defendant's counsel would advise the defendant to plead guilty in order to rely on mitigating factors which he believed will carry great weight that may be diminished if a guilt-innocence phase is conducted. The

Petitioner in the present case may have decided this was one of those such circumstances because of the heinous nature of the offense.

Petitioner claims as evidence that the plea was not voluntarily made the fact that he received nothing in return for his plea. Petitioner made a strategic choice in entering his plea of no contest for both procedural and sentencing purposes. Now that the outcome is adverse to the Petitioner it is inherently unfair for him to claim that such strategy which was unsuccessful renders the plea invalid. The Petitioner asks this court to use hindsight in an attempt to further his cause.

In entering his plea of no contest, the Petitioner was permitted, by stipulation from the State of Ohio through the assistant prosecutor, to change his earlier Motion *in Limine* on his confession to the polygraphist Robert Holmok, to one of a motion to suppress. The Petitioner wanted this to preserve on appeal the subject matter of said motion.

This was a benefit bestowed upon the Petitioner deemed important to him at the time the plea was entered. Therefore, Petitioner's claim that he received no benefit for his plea is simply not true.

It was also Petitioner's hope that said plea would benefit him by causing the trial court to be more lenient towards him in sentencing and not impose a penalty of death.

Petitioner further argues that evidence of the invalidity of the plea is that Petitioner throughout maintained his innocence. An accused may voluntarily, knowingly, and with full understanding consent to the imposition of a sentence even though he is unwilling to admit to participation in the crime, even if his guilty plea

contains a protestation of innocence. *North Carolina v. Alford*, 400 U.S. 25 (1970), *Brady v. United States*, 397 U.S. 742 (1970). Reasons other than the fact that he is guilty may induce a defendant to so plead and he must be permitted to judge for himself in this respect.

In *Lynch v. Overholser*, 369 U.S. 705 (1962) as cited to in *North Carolina v. Alford*, 400 U.S. 25 (1970), this Court implied that there would be no constitutional error in accepting a plea even though evidence before the Court indicated there was a valid defense by which defendant could proceed with at trial.

This Court in its opinion in *Brady v. United States*, 397 U.S. 742 (1970), stated:

> "The rule that a plea must be intelligently made to be valid does not require that a plea be invulnerable to later attack if the defendant did not correctly assess every relevant factor entering his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the qualities of the State's case or the likely penalties attached to alternative causes of action." *Brady v. United States, supra* at 757.

The Petitioner and his counsel were informed by the trial court of all the charges against him, they were aware of the possible punishment for each of those charges. They were aware of their right to a jury trial, which they waived as a matter of trial strategy. They were aware of their right to confront witnesses, and make the state prove each and every element of the charge, which they waived as a matter of trial strategy. Now that the Petitioner has learned that his "calculus misapprehended" the final outcome he wishes to have the plea invalidated. The rules do not allow such

circumscription of remedies; the Petitioner may not dictate his own relief nor deprive the trial court its discretion in accepting a plea as valid.

Petitioner claims that the trial court committed prejudicial error in accepting the plea of no contest without first establishing a factual basis for the plea. However, it must be noted that Ohio Criminal Rule 11 does not require the trial court to establish such factual basis. The court must establish that the plea was made by the defendant knowingly and voluntarily with a full understanding of the effect of the plea. The trial court along with all previous reviewing courts concluded the plea was made knowingly, voluntarily, and intelligently.

Petitioner claims that language in *North Carolina v. Alford*, 400 U.S. 25 (1970) demands that such determination of a factual basis be made. This is not legal precedent but rather *dicta* in this Court's opinion. This Court has implied that there would be no constitutional error in accepting a plea even though evidence before the Court indicated there could be a valid defense with which to proceed. *North Carolina v. Alford, supra, Lynch v. Overholser*, 369 U.S. 705 (1962).

Petitioner further claims that his plea was not intelligently made because it did not involve effective assistance of counsel. This Court developed a two-prong standard by which all ineffective assistance of counsel claims should be measured against in *Strickland v. Washington*, 466 U.S. 668 (1984).

> "First the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland v. Washington, supra* at 687.

A review of the facts of *Strickland* will reveal that it is very similar to the case *sub judice*. The defendant entered the plea of guilty to an indictment that included three capital murder charges. In preparing for the sentencing phase of the trial, defense counsel spoke with the defendant about his background, but did not seek out character witnesses. Counsel did not request a pre-sentence report in fear that it would have included the defendant's criminal history. Counsel advised defendant to rely solely on his plea colloquy in hopes of receiving leniency for stepping forward and admitting responsibility. These were all trial tactics that counsel chose to employ. This strategy seemed to be a viable alternative to presenting numerous pieces of possible mitigating evidence that would in all probability be discredited by the prosecution.

This Court considered this with great scrutiny when rendering its decision.

> "The record shows that respondent's counsel made a strategic choice to argue for the extreme emotional distress mitigating circumstances and to rely as fully as possible on respondent's acceptance of responsibility for his crimes. Although counsel understandably felt hopeless about respondent's prospects . . ., nothing in the record indicates, . . ., that counsel's sense of hopelessness distorted his professional judgment: Counsel's strategy choice was well within the range of professionally reasonable judgments." *Strickland v. Washington, supra* at 2070.

This Court believed that counsel's choice of strategy was well within the "range of professionally reasonable judgments." This Court held that the defendant failed on both prongs of the standard of alleged ineffectiveness. He failed to show either deficient performance or sufficient prejudice. There was no showing that the justice of his sentence was rendered unreliable by a failure of the adversary system caused by inefficiencies of his counsel.

The case *sub judice* is readily comparable to that of the previous case discussed. Both involved strategic choices made by the defendants along with their counsel. Petitioner's continual claim that he received nothing in return for his plea is unfounded. Petitioner, in entering his plea of no contest, was permitted through stipulation from the state of Ohio, to change his earlier Motion *in Limine* to one of a motion to suppress for purposes of preserving an appeal on the subject matter of said motion. Petitioner's tactic was also entered in hopes of receiving a more lenient sentence, much like the tactic in *Strickland, supra.* The Petitioner's counsel made a strategic choice that when looked at in light of the *Strickland* decision can be seen to fall within the range of professionally reasonable judgments.

Petitioner asks this Court to use hindsight to render a decision on whether a strategic choice was a proper choice. Hindsight may not be used as it would be inherently unfair for this Court or any court to judge attorney performance and decision making on the final outcome of any case.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

Pages 10 through 44 of the Transcript of Proceedings on November 30, 1984

[10] Mr. Nagy: Your Honor, if I may, I believe the next course of business would be—prior to the inquiry of the Defendant—we have prepared in conjunction, working with Defense counsel on this matter, a certificate of counsel which I would ask at this time one of the attorneys for Mr. Post to read to the Court.

Judge Betleski: All right.

Ms. McGough: If it please the Court, this is a certificate of counsel in Case Number 29194.

The undersigned, as attorneys for Defendant Ronald Ray Post, hereby certify, one, that we have read and fully explained to the Defendant the allegations contained in the indictment in the within matters; two, to the best of our knowledge and belief, the statements, representations, and declarations made by the Defendant in the attached petition are in all respects accurate and true; three, we have examined the maximum penalty for each charge in the indictment to Defendant.

[11] Judge Betleski: Explained.

Ms. McGough: We have explained the maximum penalty for each charge in the indictment to the Defendant; four, that the plea of no contest offered by the Defendant accords with our understanding of the facts he related to us and is consistent with our advice to him, to the Defendant; and that we understand and have communicated to the Defendant, who also understands, that the plea of no contest is not an admission of Defendant's guilt but is an admission of the truth of the facts contained in the indictment in this case; and five, in our opinion, the plea of no contest offered by the Defendant is voluntary, is made with understanding of all his rights and consequences of his actions.

We recommend that the Court accept the plea of no contest, understanding that if the indictment alleges facts sufficient to support a conviction, then the Trial Court's acceptance of the no contest plea requires a guilty finding, assuming that the statement of facts or explanation of circumstances by the prosecuting attorney, following the entry of the plea of no contest, establishes all the elements of the offenses [12] charged in the indictment.

By voluntarily entering this plea of no contest, Defendant understands that we, as his attorneys, will not contest nor deny the truth of the allegations contained in the prosecuting attorney's explanation of circumstances or statement of facts to the Court of three Judges upon tendering said plea.

This is signed by myself and Michael Duff in open Court in the presence of the Defendant above-named, after full discussion of the contents of the certificate with the Defendant, Ronald Ray Post, this 30th day of November, 1984.

Mr. Duff: Your Honor, before it's executed, there's one addendum I'd like to make—and Mr. Nagy is aware of this—on behalf of the Defendant.

The second to last sentence of this agreement, "By voluntarily entering this plea of no contest," that sentence, Defendant understands that we will not contest nor deny the truth of any allegation contained in the statement of facts.

Your Honor, to that we'd like to add that a crucial element involved in the entering of this plea—and it's not contained in the statement [13] of facts as written up by the Prosecutor's Office—is the Court's ruling that Detective Holmok could testify as to the statements Ronald Post allegedly made to him, and we'd object to

that omission from the prosecutor's statement of facts as we feel that's a crucial piece of evidence, and that's the evidence which we intend to take up on appeal.

So that, that is made clear on the record. Is that correct, Mr. Nagy?

Mr. Nagy: Mr. Duff's statement is correct, Your Honor, in that we have had a disagreement on that particular point.

However, I would point out that it is our contention, and it will certainly be up to this Court to determine whether our statement of facts leaving out that particular item will satisfy all of the elements of the crimes charged in the indictment.

If it does so, we submit that it is sufficient for this Court to make a finding.

We further submit that just because this Court ruled that a particular piece of evidence is admissible at trial does not necessarily make it incumbent on the Prosecution to present that evidence at trial.

[14] It is a matter of trial strategy whether it would be presented and whether it should be presented as part of the State's case, a matter which we were at some odds on because obviously we hadn't gotten into the trial and we hadn't made that determination at this point.

So, with that, we would still accept the certificate of counsel, that not being a denial but merely an explanation of what they feel is an omission; we feel is simply a matter within our discretion as the triers for the State's case.

Mr. Duff: Your Honor, we feel it's a crucial omission because we feel that's a crucial piece of evidence, and we want the record to reflect that Detective Holmok's testimony is part and parcel of this plea and we intend to take that up on appeal.

So, it's clear.

Mr. Nagy: We understand that.

Judge Cirigliano: Do you intend to use that in the statement of facts to support your position on behalf of the State, Mr. Nagy?

Mr. Nagy: To use that statement to Detective Holmok?

Judge Cirigliano: Yes.

[15] Mr. Nagy: No, Your Honor, I do not.

Mr. Duff: It's conspicuously absent from the statement.

Judge Cirigliano: I understand.

Mr. Duff: And that's why we object.

Ms. McGough: With those comments on the record, we offer to the Court our certificate of counsel.

Judge Betleski: All right, thank you.

Mr. Nagy: Your Honor, at this time I would ask that the Court inquire as is usual with the proffer of a no contest plea, using our petition to withdraw and enter the plea of no contest as the basis for its inquiry.

Judge Betleski: You want to step forward, Mr. Post. It will be a little handier. We don't have to shout at a great distance.

Your tender?

Mr. Duff: Your Honor, may it please the Court, in Case Number 29194, pursuant to extensive pretrial negotiations in this case, we'd withdraw our former plea of not guilty in this case to all counts of the indictment and enter [16] a plea of no contest to all those counts.

We've gone over the petition to withdraw the plea of not guilty and enter a plea of no contest in detail with Mr. Post.

Let the record reflect that it's nine pages. Mr. Post has signed it; he tells me, Your Honor, that he understands all the questions in there.

I'd also ask the Court to note that on page eight of the original, Item Number Nineteen, that first sentence has, by agreement of the parties, been scratched from the petition.

Let the record so reflect, Your Honor, that was upon request of Mr. Post.

Your Honor, we've gone over this plea sheet in detail with him, Ms. McGough and I, and it's our desire at this time to enter the plea of no contest to all the charges.

Judge Harris: How many charges are there?

Mr. Duff: Three, Your Honor.

Ms. McGough: There are three counts.

Judge Harris: There are three counts?

[17] Ms. McGough: And the specifications.

Mr. Duff: Aggravated robbery and aggravated murder in the alternative, two different ways, Your Honor.

Judge Betleski: These initials on this, is that—

Mr. Duff: Michael James Duff after Robert A. Nagy.

Judge Betleski: Okay.

Mr. Nagy: That is correct, we have agreed to that, Your Honor.

It's my further understanding that the plea of no contest is to all charges and specifications.

Mr. Duff: That's correct. It includes the specs on the indictment.

Judge Betleski: Well, Mr. Post, I'm reading here. In this nine pages you've given me a lot of data, a lot of information.

It says your full name is Ronald Ray Post, you're twenty-five years of age. Is that correct?

The Defendant: Yes, sir.

Judge Betleski: And your birthdate: August 1, 1959. You've had twelve years of education.

The Defendant: Yes, sir.

[18] Judge Betleski: You're able to read and write and understand the English language.

The Defendant: Yes, sir.

Judge Betleski: That's important.

You're represented by two attorneys appointed by the Court, and they're Mr. Michael Duff and Attorney Lynett McGough, right?

The Defendant: Yes, sir.

Judge Betleski: Your attorneys have already explained to you the charges in this case, correct?

The Defendant: Yes, sir, they have.

Judge Betleski: First we'll go into the charges, because the nature of the offenses have to be explained to you, and under the Criminal Rules they have to be explained to you in ordinary language that you can comprehend.

Many times the terminology is a little complicated. So, for that reason, I'll just read the narration here.

Count one in the indictment charges you with an aggravated robbery of the Slumber Inn Motel and/or the desk clerk, Helen Vantz, while you had a firearm on or about your person or under your control, and this is in violation of Section 2911.01 [19] of the Ohio Revised Code. It's an aggravated felony of the first degree.

Count one also contains a specification alleging that you had a firearm on or about your person or under your control while committing this offense.

So, that has to do with count one and the spec.

On count number two you're charged with the aggravated murder of Helen G. Vantz with prior calculation and design in violation of Section 2903.01(A) of the Ohio Revised Code.

Count two also contains a specification under Section 2929.04 of the Ohio Revised Code alleging that this offense was committed while you were committing or attempting to commit aggravated robbery and that you were the principal offender in the commission of the aggravated murder of Helen G. Vantz, and that you committed the murder of Helen Vantz with prior calculation and design while you were committing or attempting to commit aggravated robbery.

The second specification to count two alleges that you had a firearm on or about your person or under your control while you committed [20] this offense.

Do you understand me so far?

The Defendant: Yes, sir.

Judge Betleski: Count three. It says that the aggravated murder of Helen Vantz was committed while you were committing or attempting to commit aggravated robbery in violation of Section 2903.01(B) of the Ohio Revised Code.

Count three also contains a specification under Section 2929.04 of the Ohio Revised Code to the effect that the offense was committed while you were committing or attempting to commit aggravated robbery, and that you were the principal offender in the commission of the aggravated murder of Helen G. Vantz, and that you committed the murder of Helen G. Vantz with prior calculation and design while you were committing or attempting to commit aggravated robbery.

The second specification to count three alleges you had a firearm on or about your person or under your control while you committed the offense.

This count alleges the same offense as count two but under a different theory of law, do you understand?

[21] The Defendant: Yes, sir, I do.

Judge Betleski: Now, you've received a copy of the charges against you and you've had an opportunity to review the same with your attorneys for a number of weeks prior to this date, is that correct?

The Defendant: Yes, sir, I have.

Judge Betleski: You've read and have had read to you all the charges, and you've discussed them with your lawyers, correct?

The Defendant: Yes, sir.

Judge Betleski: You understand each of the charges and the elements contained in them, correct?

The Defendant: Yes, sir.

Judge Betleski: You've told your lawyers all the facts and circumstances known to you about the charges made against you, and you believe that your lawyers have fully informed you on all legal matters and your rights, correct?

The Defendant: Yes, sir.

Judge Betleski: Now, you also say here you know that the Court must be satisfied that there is a factual basis for your plea of no contest before the plea can or will be [22] accepted, and you understand that a plea of no contest is not an admission of your guilt but it it an admission of the truth of the facts alleged in the indictment. You understand that?

The Defendant: Yes, sir.

Judge Betleski: The facts in the indictment were as I read previously, do you understand that?

The Defendant: Yes, sir, I understand.

Judge Betleski: You further understand, and this is obvious, that the Court is required to make an explanation of the circumstances—excuse me—to take an explanation of the circumstances from the prosecuting attorney on your plea of no contest before making a finding on said plea?

You understand, that comes subsequent. I listen to the prosecutor after I've explained your rights to you, you understand?

The Defendant: Yes, sir, I do.

Judge Betleski: And you're aware, it says here, and you agree—I'll ask you: Do you agree that the indictment alleges facts sufficient to support a conviction and the prosecuting attorney's explanation of circumstances also [23] contains such facts sufficient to support a conviction? You understand that?

The Defendant: Yes, sir.

Judge Betleski: If this is so, then the Trial Court's acceptance of a no contest plea requires a guilty finding, you understand?

The Defendant: Yes, sir.

Judge Betleski: Finally, with regard to your plea of no contest, you're aware that if it appears to the Trial Court that the explanation of circumstances as recited by the prosecuting attorney does not constitute the offenses as charged in the indictment, the Trial Court will refuse to accept the plea of no contest?

That's important. I'll repeat it.

If the narration of facts by the prosecuting attorney does not constitute the offenses as charged in the indictment, the Trial Court will refuse to accept your plea of no contest.

The Defendant: Yes, sir, I understand.

Judge Betleski: You go back to square one.

The Defendant: Yes, sir.

Judge Betleski: Your lawyers have counseled with you and advised you as to the nature [24] of the charges against you.

We're repeating ourselves.

They've told you about the elements of the charges, all the lesser included offenses, and all the possible defenses that you may have in this case.

Are you satisfied that your lawyers have done what you have requested them to do? Is that the fact; are you satisfied?

The Defendant: Yes, sir, I am.

Judge Betleski: Now, you have pleaded not guilty to the charges made against you, and if you do not withdraw your plea of not guilty—because what we have here is a proffer of a no contest plea, and it's as though it's hanging in the air here; and you can withdraw it at any time, you follow?

You pleaded not guilty and that's on the record, excuse me. Your no contest plea is hanging in the air until it's accepted by this Court, okay?

Now, if you want to, you can withdraw this no contest plea. We would stop right here. But if you do, you'd go back to your not guilty plea, you understand that?

[25] The Defendant: Yes, sir, I understand.

Judge Betleski: With a not guilty plea then you would have your right to a jury trial, you understand that?

The Defendant: Yes, sir, I do.

Judge Betleski: By tendering a plea of no contest, upon acceptance of it and upon a finding, then what has happened is that you have set aside your trial to a jury, you understand that?

The Defendant: Yes, sir, I do.

Judge Betleski: Actually, in the interim we have already put on record that you don't want a trial by jury but you want a trial by a three Judge panel.

The Defendant: I understand.

Judge Betleski: If you go back to a jury trial or if we go ahead with the procedures here, in the event of the jury trial the jury verdict must be unanimous; likewise,

the Judges' decision must be unanimous as for guilt or innocence, do you understand? It is the same requirement.

The Defendant: Yes, I do.

[26] Judge Betleski: That doesn't change. Whether it's a jury or whether it's a three Judge panel, it's got to be unanimous.

The Defendant: I understand.

Judge Betleski: In a jury trial, which you wouldn't have here—in a Judge's trial you'd have the right to confront the witnesses.

In this case there will be no witnesses; there will be just a narration of the facts.

But you understand in a jury trial you would have the right to confront witnesses. Do you understand that?

The Defendant: Yes, I do.

Judge Betleski: And you'd have the right to get witnesses on your behalf. The State would mandate any witness you wanted at a jury trial to be here, you understand that?

The Defendant: I understand.

Judge Betleski: The burden in a jury trial is on the State to prove your guilt beyond a reasonable doubt. That's a high degree of proof.

You have no burden to prove your innocence. That's the presumption of innocence that you have at a jury trial, do you understand that?

[27] The Defendant: I understand.

Judge Betleski: You do not have an obligation to testify at any trial. You have the privilege against self-incrimination.

Not only that, but a jury is instructed prior to the trial that if you choose to remain silent at a trial, your silence can't be construed as if it were an admission of any act charged in the indictment, you understand that?

The Defendant: Yes.

Judge Betleski: I've touched on the presumption of innocence that clothes you at a trial table for a jury.

You have also the right of appeal of any judgment to the Court of Appeals, and this would apply regardless of the three Judge finding or the jury finding, do you understand? It compares.

The Defendant: Yes, Your Honor, I do.

Judge Betleski: You have the right to appeal without cost, if you're unable to pay the cost of an appeal, you understand?

The Defendant: Yes, I do.

Judge Betleski: That's where the person is impoverished or indigent.

[28] You have a right to appointed counsel on an appeal if you're unable to hire counsel, you understand?

The Defendant: I understand.

Judge Betleski: And you have the right to have the necessary documents prepared for an appeal without cost if you can't afford them, you understand?

The Defendant: I understand.

Judge Betleski: There's one other item here that's listed. You have the right to assistance of attorneys at all stages of the proceedings, which is true, do you understand that?

The Defendant: Yes, sir, I do.

Judge Betleski: You've already had that up to this time and it's not going to terminate, you understand?

The Defendant: Yes, sir, I do.

Judge Betleski: Do you know that if you plead no contest, there will be no trial either to a jury or to the Court on any of the charges that you plead no contest to, and that you will be giving up your constitutional rights set out above, except certain rights of appeal which your [29] lawyers have explained to you?

The Defendant: I understand.

Judge Betleski: Yes, okay.

Your lawyers have informed you that the penalties for aggravated murder, should you be convicted under counts two or three of Case Number 29194, and if you're also convicted of the first specification under either of those counts, can be death, life imprisonment without possibility of parole for thirty years, or life imprisonment without possibility of parole for twenty years.

The penalties may also include a fine of up to $25,000, and there is no possibility of probation.

Do you understand that?

The Defendant: Yes, sir, I do.

Judge Betleski: So that, on counts two and three, with the specs, it can be death, life imprisonment without possibility of parole for thirty years, or life imprisonment without possibility of parole for twenty years, you understand?

The Defendant: Yes, sir, I do.

Judge Betleski: They are serious.

[30] The mandatory penalty for aggravated murder as contained within count two or count three of the indictment to which you would be subjected if found guilty of those aggravated murder offenses but not guilty of any specifications under Ohio Revised Code 2929.04 is life imprisonment without possibility of parole for twenty years.

This penalty may also include a fine of up to $25,000.

I understand that there would be no possibility of probation.

This touches on the offenses without the specs, correct, Counsel?

Ms. McGough: That's correct, Your Honor.

Judge Betleski: So that, it would be life imprisonment without possibility of parole for twenty years.

Now, the possible penalty on count one, which is an aggravated felony of the first degree, is a minimum term of confinement of five, six, seven, eight, nine or ten years, and a maximum term of confinement of twenty-five years.

These terms of confinement may be imposed as actual incarceration.

[31] In addition, the possible fine for an aggravated felony of the first degree is not more than $10,000.

Touching on count number one again, you notice there's a spread of time that can be imposed as a part of the sentence. It can be five, six, seven, eight, nine or ten, to twenty-five.

Of the lower years that are listed there, that can be actual incarceration. Actual incarceration means that there can be no probation, no parole. The only thing you can get is good time servitude, and conceivably a governor's pardon. That's about the only extent.

Otherwise than that, actual incarceration means that you serve the time without hope of parole or probation, or without any work release or something of that nature, you understand?

The Defendant: Yes, Your Honor, I understand.

Judge Betleski: Do you understand that if you're found guilty of a specification involving your having a firearm on or about your person or under your control during the commission of any of the offenses of which you're charged, the punishment for each shall include an [32] additional term of incarceration of three years, which term or terms shall be served consecutively with and prior to any other sentence which may be imposed for the offenses?

In addition, do you understand if you're found guilty of count one and also found guilty of having a firearm on or about your person or under your control during the commission of the aggravated robbery offense set forth in count one, the Court shall impose a term of actual incarceration of three years in addition to any other sentence imposed, which term shall be served consecutively with and prior to any other sentence imposed; do you understand that?

The Defendant: Yes, Your Honor, I do.

Judge Betleski: With a firearm it's three additional years of actual incarceration, and that has to be served prior to any other servitude. It only applies to count number one, you understand?

The Defendant: Yes, I understand.

Judge Betleski: It says here in the next paragraph you understand that the Trial Judge must orally inform you of your rights and the law [33] and the possible punishments to which you are subject by a plea of no contest, if accepted; and if applicable, that you're not eligible for probation consideration pursuant to Ohio Criminal Rule 11 or any other provision of the law of this State, you understand that?

The Defendant: Yes, Your Honor, I do.

Judge Betleski: Sometimes people tender a plea with the concept in mind that they could be considered for probation, but these offenses are such that the law precludes any Judge to consider any probation for an offender, do you understand?

The Defendant: Yes, I do.

Judge Betleski: The next sentence indicates—and I don't know what your history or background is—it says if you are presently on probation or parole in this or any other Court, you know that by pleading no contest in this matter your probation or parole may be revoked and

you would thereafter be required to serve imprisonment in the case for which you are on probation or parole in addition to any sentence imposed on you in this case or these cases, you [34] understand?

The Defendant: Yes, Your Honor.

Judge Betleski: If you are presently on probation or parole, then your plea here acts as a revocation and that would have to be re-served, so to speak; the unserved balance of that punishment would have to be served before this sentence could be served.

You understand that by law the sentence in these cases will be served consecutively to the sentence in any case for which you're on probation or parole.

That's another way of saying the same thing. Consecutive means one after the other; concurrent means together.

Now, you're declaring that no officer of this Court, any counsel or any Court, has promised or suggested that you will receive a lighter sentence, probation, or any other form of leniency in exchange for your no contest plea.

If anyone did make such a promise, I know that he or she had no authority to do that.

Now, that's important. I don't know of anybody that's offered you either a lighter sentence or probation or any other forms of leniency.

[35] So that, that would be considered as an inducement to you to plead, you follow?

The Defendant: I think so, Your Honor.

Judge Betleski: In other words, if someone promised you something less or some advantage. Usually I ask that question. Did anyone offer you any kind of a reward or benefit for this plea?

The Defendant: No, they didn't, Your Honor.

Judge Betleski: You see, that means it's got to be voluntary, it's got to be from you standing there and saying, "I plead."

Because if it was an inducement for a reward—and leniency would be a reward or probation would be a reward if potential in the future—but nevertheless, it would be a reward. So that, we're clear that no one offered you that sort of a benefit.

Now, how about force or threat or fear of some avenue, some area?

The Defendant: No, Your Honor.

Judge Betleski: That goes to the voluntariness of the plea, too. Because if there is some threat or pressure and you're pleading to [36] get rid of that threat or pressure, then that isn't voluntary, you understand?

The Defendant: I understand.

Judge Betleski: You've authorized your attorneys to enter into negotiations with the State of Ohio, represented by the Lorain County Prosecutor's Office, and you understand that as a result of those negotiations the State of Ohio had indicated its willingness to accept the following plea.

Now I'll read it, and I'll read it as though you're reading it, okay?

I will plead no contest to the following offenses and specifications: One, the aggravated robbery of the Slumber Inn Motel and/or the desk clerk, Helen G. Vantz, as set out in count one in Case Number 29194, a violation of Section 2913.01 of the Ohio Revised Code; specification one to count one under the same indictment; the aggravated murder of Helen G. Vantz with prior calculation and design as set out in count two in Case Number 29194, a violation of Section 2903.01(A) of the Ohio Revised Code; number four, specification one to count two under this indictment; number five,

specification two to count two under this indictment; number six, the aggravated murder of Helen G. Vantz [37] while committing the crime of aggravated robbery as set out in count three of Case Number 29194, in violation of Section 2903.01(B) of the Ohio Revised Code; seven, specification one to count three under this indictment; eight, specification two to count three under this indictment.

That's pretty technical but it really says all of the things I've said previously, the nature of the offense, what the potential punishment is, and what you're pleading no contest to.

You're really pleading no contest to all of the counts and specs in the indictment, you understand?

The Defendant: Yes, Your Honor, I do.

Judge Betleski: You counsel have been overzealous, because here he says again he affirmatively states that no one has used any force, threats or coercion, or made any representations or promises to me in order to get me to plead no contest to the charges in the indictment against me in Case Number 29194. That repeats the same thing.

Is the plea voluntary? If it is, then it can't be based on any representations or promises, [38] you understand?

The Defendant: Yes, I do.

Judge Betleski: You further understand that when you plead no contest to all of the charges and specs in the indictment against you in this case, you will be subjected to mandatory incarceration.

And I understand fully the penalty for each of my eight separate pleas of no contest as set forth herein generally above but as specifically set forth as follows to each count and specification of the indictment to which I am pleading no contest.

Sub-paragraph A, aggravated robbery, count one of Case Number 29194 and specification one of count one carries the following possible penalties.

We're repeating ourselves, but I guess for the record it's better that it be clear.

A minimum term of confinement of five, six, seven, eight, nine or ten years; a maximum term of confinement of twenty-five years. The term may be imposed as actual incarceration.

The count also carries a mandatory term of imprisonment of three years, which must be served consecutively with and prior to any other sentence [39] imposed upon me.

Futher, you can be fined up to $10,000 on this count.

The nature of the offense, the degree of punishment, do you understand?

The Defendant: Yes, Your Honor, I do.

Judge Betleski: B, aggravated murder under count two and the first spec there, specification thereto, carries the following possible penalties: Death, life imprisonment with parole eligibility after thirty years, or life imprisonment with parole eligibility after twenty years.

Should the death penalty not be selected as the punishment, any sentence of imprisonment would be mandatory. A fine up to $25,000 may also be imposed.

Specification two, which involves possession of a firearm while committing the offense set out in count two, requires a mandatory term of imprisonment of three years, which must be served consecutively with and prior to any other sentence imposed upon you.

That is a serious one. Death, life [40] imprisonment with parole eligibility after thirty years, or life imprisonment with parole eligibility after twenty years, or a $25,000 fine, plus the three years for the firearm, you understand?

The Defendant: Yes, Your Honor, I do.

Judge Betleski: The next paragraph. Aggravated murder, count three, and the first specification thereto carries the following possible penalties: Death, life imprisonment with parole eligibility after thirty years, or life imprisonment with parole eligibility after twenty years. So that, it's the same thing.

And should the death penalty not be selected as the punishment, any sentence of imprisonment would be mandatory. A fine up to $25,000 may also be imposed.

The specification two involves possession of a firearm while committing the offense set out in count three, which requires a mandatory term of three years, which must be served consecutively with and prior to any sentence imposed.

Two and three are identical, they are the same, they are serious penalties, you understand?

The Defendant: Yes, Your Honor.

[41] Judge Betleski: You further understand that all of the above sentences may be imposed consecutively, one after the other, to be served one after the other; or concurrently, to be served at the same time, at the discretion of the Court—that's the three of us—except that all offenses involving three year mandatory sentences for possession or use of a firearm as set out above must be served consecutively with and in addition to each other and to any other sentences.

You understand?

The Defendant: Yes, I do.

Judge Betleski: Firearms are separate, they are consecutive; the other three can be concurrent.

The Defendant: I understand.

Judge Betleski: They can be consecutive or concurrent.

Do you understand that the sentence you receive will be a matter within the control of the—it says Trial

Judge; it means the three Judges; we have to be unanimous on this—and the penalties established by law for the offenses to which you're pleading no contest?

Do you understand that?

[42] The Defendant: Yes, Your Honor, I do.

Judge Betleski: Are you prepared to accept any punishment permitted by law which this Court sees fit to impose?

The Defendant: Yes, Your Honor.

Judge Betleski: Paragraph nineteen is the one where there's some eradication, and I don't know what it did contain but I'll read nineteen as I see it.

Because I admit the truth of all of the facts alleged in the indictment against me in Case 29194 as stated herein, I respectfully request the Court to accept my plea of no contest in accordance with the terms of this document and the negotiations set forth herein between my lawyers and the prosecuting attorney, which plea I am now tendering to the Court.

That repeats what I said. It's suspended all the while I've been reading. That plea of no contest has been tendered, has been proffered, and it's still in suspension. It hasn't been accepted yet, you understand?

The Defendant: I understand.

Judge Betleski: Now, are you under [43] the influence of any alcohol or drug at this time?

The Defendant: No, Your Honor.

Judge Betleski: So that, you have all of your faculties?

The Defendant: Yes, Your Honor.

Judge Betleski: Are you offering this plea to the offenses and the specs voluntarily and of your own accord, with full understanding of all matters set forth in this?

The Defendant: Yes, Your Honor, I am.

Judge Betleski: It says here you acknowledge all of the above documents containing twenty-one paragraphs and consisting of nine pages by signing it this 30th day of November, 1984.

Is that your signature there, Mr. Post?

The Defendant: Yes, Your Honor, it is.

Judge Betleski: Ronald Post.

The record is clear. I have gone over it as minutely and as clearly as I could. Is there anything about that that I inquired that you need further inquiry about?

The Defendant: No, Your Honor.

Judge Betleski: Bear with us.

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[44] Thereupon, a discussion was had off the record.

Judge Betleski: Now, I am satisfied, and I've discussed it with the other Judges. We're satisfied that the Defendant is aware of his rights, the right to a jury trial. He's had benefit of counsel; he knows the privileges against self-incrimination, the right to get witnesses; recognizes the nature of the charges against him, the potential penalties and punishments; recognizes he's not eligible for probation; recognizes the actual incarceration and the mandatory punishments that could be presented here, his entitlement to what, witnesses, compulsory service of process.

I need not go on further. The Court is satisfied that this gentleman is aware of his rights and the nature of the charges against him.

We're now ready to hear narration of the facts in substantiation, unless you have something further.

Mr. Duff: Nothing.

Mr. McGough: There's one other thing that I would like to put on the record in addition to the plea sheet.

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[88] Mr. Nagy: For the record, I would proffer the tape into the record of this particular hearing, and we have no further rebuttal to present. The State would rest.

Judge Betleski: Is it your wish now on summation then?

Mr. Duff: May we approach the bench?

Judge Betleski: Yes. Well, you have the burden. You can lead.

Mr. Duff: Can we approach the bench, Your Honor?

Judge Betleski: Sure.

Thereupon, a discussion was had off the record.

Ms. McGough: Your Honor, if it please the Court, the Defense has rested its case and the rebuttal is closed at this point.

We would now request that the victim's family be permitted to speak.

Judge Betleski: All right. Is there any member of the Vantz family that would wish to bring to the Court's attention matters that might be pertinent on aggravation or mitigation?

[89] Mr. Vantz: Yes, Your Honor.

Judge Betleski: It's William, is it?

Mr. Vantz: Yes, sir.

Judge Betleski: Why don't you come into the litigation area; and if you would please, stand near Mr. Duff and you can address us then. We'd be happy to hear what you have.

Mr. Vantz: I don't know how to begin.

Judge Cirigliano: Just start with your name and address.

Mr. Vantz: Okay. My name is William H. Vantz. My address is 2496 Homewood Drive, Lorain, Ohio.

This has been quite a burden on our family, not financially to say, but more in the sense that there are people out there who can take your life for no reason whatsoever at any time of the day or night, and that scares me to death. It scares my wife, it scares all my relatives.

You can pick up a newspaper and read about somebody else being killed but it never strikes until it strikes your home.

My mother was a caring, loving woman who would do anything for anyone. She never hurt [90] anyone; she would never, ever hurt anyone. She wouldn't have put up a fight. There was—she had no defense.

In the twelve years that she worked at Slumber Inn she had never had a Christmas off, and this Christmas—well, the Christmas of 1983, she was supposed to have gone to Mentor and stayed with my brother, his wife, and her only grandson.

That would have been the first Christmas in thirteen years; twelve, thirteen years. She never got that chance, she never got the opportunity.

She was supposed to go see her day's old cousin, her mother's—her niece's daughter that morning, and she never got the chance.

Just she was full of life. She loved to go places and do things. She went to Austria, she went to the Bahamas. She enjoyed her life to the fullest, and for it to be taken in such a way is just inexcusable.

I cannot in my heart forgive Mr. Post; I never will. There is no way I could do that. He took from me my mother, and my mother was—Mr. Post has had a chance to defend himself; she never got that chance.

She was executed; and I feel the only just [91] punishment for execution is execution. My family feels that way, my cousins, my brothers, our wives, friends of the family.

We loved that woman, as did everyone that came in touch with her. A part of my life left when she left, and that will never come back.

There are things that she'll never see that she wanted to see, like my child, if I have one.

This is hard for me because I'm not—I don't like to publicly speak, but somebody had to tell our side of the story.

I'm going to leave it in your hands to do what's right, what's just. I'm not versed in the law, but yet in my heart I feel the only thing to do is to give Mr. Post what he deserves.

Thank you.

Judge Betleski: Thank you, Mr. Vantz. We appreciate your presentation.

The Court has discussed with counsel, and each side is going to get twenty minutes for summation and argument, with the State presenting in the first instance.

I'll keep track of the time, and we're happy to hear your arguments.

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